IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 174 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMAN MANNALAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 174 of 1992

MR DEEPAK M SHAH for Petitioner No. 1

MR MA BUKHARI APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE D.P.BUCH

Date of decision: 04/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The appellant-accused has challenged in this appeal the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Mehsana in Sessions Case No.112/91 convicting him for the offence under Section 302 of IPC for committing murder of his own wife Kamla and sentenced him to suffer life imprisonment with fine of Rs.2,000/= in default to undergo further imprisonment of six months.

#. It is the prosecution case that prior to 7-8 years of incident i.e. on 23.12.1990 accused-Laxman married with deceased Kamla. The accused was not earning and there was quarrel between him and his deceased wife and at times mother-in-law of deceased was also giving her taunts. The accused is of a vagabond nature. On 23.12.1990 it is alleged that he committed murder of his wife-deceased Kamla by inflicting as many as 19 injuries with knife. There was no one in the house except him and deceased wife Kamla. While coming out from the house he was seen by Manjulaben Manji PW-7 Ex.22. Similarly, Premsinh Hazarisinh PW-8 Ex.23 and Kankuben Hazarimal PW-4 Ex.17 are the witnesses who have seen the accused and deceased-Kamla together just before the incident which took place in their own house. At about 11.30 a.m., immediately, Hazarimal, father of deceased lodged the complaint before the police about the incident on 23.12.1990 when he found his daughter in blood pool. Thus, within few hours of the incident, the first information report was lodged and the name of the accused was disclosed in it. After commission of offence the accused left the village Vadnagar and went to his native in Rajasthan and he was arrested after five days i.e. on 28.12.1990 as per the arrest panchnama Ex.19. Weapon i.e. knife used by the accused for committing crime and the clothes having blood stains were discovered at the instance of accused as per panchnama Ex.21. Discovery panchnama was duly proved by Rakesh Siyaram. The prosecution examined Dr.Tushar Mohanbhai, who had performed postmortem. Postmortem report is at Ex.12 showing that deceased had received as many as 19 injuries, out of which 4 injuries were sufficient in ordinary course to cause the death. After investigation, the police filed charge sheet against the appellant-accused for the offence under Section 302 IPC and the accused was committed to the court of Sessions

and ultimately he was tried before the court of Addl. Sessions Judge, Mehsana for the offence under Section 302 IPC.

#. The prosecution has examined three witnesses viz. (1) Kankuben PW-4 Ex.17, (2) Manjulaben PW-7 Ex.22 and (3) Premsinh Hazarisinh PW-8 Ex.23 on the point of accused and deceased last seen together, prior to the incident. The prosecution has also examined witnesses Sureshbhai PW-10 Ex.37, Bharatkumar PW-11 Ex.38 and complainant Hazarimal Ratnaji for the purpose of proving motive. Dr.Tushar Mohanbhai PW-1 Ex.11 was examined to prove the postmortem note. Postmortem note is at Ex.12, Arrest Panchnama dated 28.12.1990 of the appellant-accused is at Ex.19, Discovery Panchnama of muddamal weapon knife and blood stained clothes are at Ex.21 which are duly proved by Rakesh Siyaram PW-6 Ex.20. FSL report is at Ex.32. Investigation Officer Shri Dilip Swaminarayan, PSO, Vadnagar, who has investigated the case is examined at PW-12 Ex.39.

#. Learned counsel Shri Dipak Shah for the appellant-accused has taken us through the evidence of Kankuben PW-4 Ex.17, Manjulaben PW-7 Ex.22 and Premsinh Hazarisinh PW-8 Ex.23. All of them have clearly stated that they had last seen the accused and deceased together just prior to the incident.

#. Manjula PW-7 stated in her evidence before the court that she was residing in police lines. She was neighbour of Hazarimal. At the time of incident Kamla, daughter-in-law of Hazarimal and wife of Hazarimal were staying together. Kamla got married at Rajasthan. 10 to 15 days before the incident, she came from her in-laws place. Wife of Hazarimal had gone to take medicine at the time of incident. The accused, who was the husband of Kamla came 10-15 days before the incident at Vadnagar. She was in her house. At that time she had seen Kamla coming with her husband and her daughter Geeta. She had seen them going inside. When she was sitting out she had seen accused coming out hurriedly, therefore, she was suspicious about the conduct of the accused. She had heard the cries of child Geeta. She was raising shouts. Premsinh son of Hazarimal came there and opened the door. She went inside along with Premsinh. They had found Kamla in blood pool. They immediately came out from their house. Premsinh called mother of deceased Kamla.

#. In her cross-examination she was asked as to whether there was any dispute between Kamla and her husband during their married life or not? She had pleaded

ignorance about it. She was also asked as to whether she had stated in her statement before the police that her mother-in-law was giving taunts or ill-treatment to the deceased. She had also stated in her cross-examination that she had not stated before the police that she was not aware that Kamla was beaten quite often and she had no talks with Laxman, she had not seen anything in the hands of Laxman. She had not stated in her police statement that Laxman was having something in his hand. She has denied to state before the police that the accused had either knife or pen knife with him. However, that is brought on record by none else but the counsel for the accused in the cross-examination of Investigation Officer Shri Dilip Swaminarayan PW-12 Ex.39 wherein he has specifically stated that Manjula has stated in her statement before the police that quite often Kamla was ill-treated in her in-laws house and her mother-in-law was taunting her and the accused was beating her. She had also stated in her statement before the police that accused had knife or pen knife in his hand. Thus, in the cross-examination of Manjula and I.O. Dilip Swaminarayan, lacuna in the prosecution case was filled up by the defence counsel.

#. Similarly, Kankuben and Premsinh have clearly deposed that they had seen accused with the deceased just prior to the incident.

#. We are aware that this is a case of circumstantial evidence and there is no eye witness to the incident but it is said that the witnesses may lie but not the circumstances. In the instant case, the motive was obvious. The accused was ill-treating his wife as he was without any job and simply wandering. Hazarimal has clearly established the motive in his evidence at Ex.15. Discovery panchnama Ex.21 regarding knife and blood stained clothes is duly proved by the prosecution. FSL report clearly shows that there is human blood on the knife which was used at the time of committing crime. It is true that the blood group is not mentioned as per the blood report, but as per the FSL report it was a human blood on the knife and admittedly the accused had not received any injury, therefore, that question would be insignificant when there was no authentic report about the blood group found on the knife discovered at the time of incident.

#. Dr.Tushar Mohanbhai PW-1 has clearly stated that he had found as many as 19 injuries, out of which 4 injuries were sufficient in ordinary course to cause the death. Mr.Shah tried to submit that as per the evidence of

doctor in his cross-examination, possibility of use of more than one weapon at the time of commission of offence cannot be ruled out. Similarly, he submitted that possibility of more than one assailant at the time of offence cannot be ruled out. Mr.Shah has taken us through report of the doctor on the spot. In his cross-examination, Dr.Tushar has stated that muddamal article i.e. knife used at the time of commission of offence was having sharp edge on one side and other side was blunt. As per the postmortem report, injury Nos. 7, 8, 16 and 17 were stab wounds and both sides of it were not smooth and rest of the injuries were smooth. Initially, he has clearly denied the suggestion that because of this type of injuries possibility of assault with two weapons cannot be ruled out. However, later on he stated that there may be more than one sharp edged weapons. However, in our considered opinion this would not help the accused in any way. It is true that he has also stated in his further cross-examination that seeing the injuries the possibility of involvement of more than one assailant cannot be ruled out. However, in our considered opinion this was an injury known and based on probabilities. Further, there was an evidence of as many as three eye witnesses Kankuben, Manjulaben and Premsinh on the point that they had seen accused together with the deceased just prior to the incident. The conduct of the accused of running away immediately after the incident and going to his native in Rajasthan is an important circumstance which goes against the accused. Thus, in our considered opinion the chain of circumstantial evidences is complete in this case.

##. We have carefully gone through the judgment of the learned judge convicting the accused for the offence under Section 302 IPC and we are in complete agreement with the reasonings recorded by the learned Judge for convicting the accused. Before parting, we must submit that halfhearted submission was made by Mr.Shah that all witnesses were from police lines and possibility of false involvement of the accused cannot be ruled out. It is true that all the witnesses were from police lines but naturally they would be the only witnesses and there was nothing to show that there was any previous enmity or hostility amongst the accused. In fact, a specific question put to the Investigation Officer Shri Dilip Swaminarayan that he has falsely involved the accused was specifically denied by him.

In view of the above discussion, we do not find any substance or merit in this appeal. Accordingly it fails and is hereby dismissed.

(B.J.Shethna, J.)

(D.P.Buch, J.)

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